

BILL # HB 2106

TITLE: prohibit photo radar; state highways

SPONSOR: Crump

STATUS: As Introduced

PREPARED BY: Martin Lorenzo

FISCAL ANALYSIS

Description

As introduced, HB 2106 would repeal A.R.S. § 41-1722 which addresses state photo enforcement systems, associated fines, and the Photo Enforcement Fund. In addition, HB 2106 specifies that the State of Arizona or any local authorities shall not use photo enforcement systems on state highways to identify traffic violations.

Estimated Impact

HB 2106 is anticipated to result in foregone revenues to the General Fund, Photo Enforcement Fund, Clean Elections Fund, and to a lesser extent various other funds that benefit state and local governments. The magnitude of the annual revenue impact to each of the funds, however, cannot be determined at this time as the photo enforcement system program commenced in late September 2008 and the Department of Public Safety (DPS) continues to deploy additional systems throughout the state. The FY 2009 budget does not reflect any revenue as a result of this program.

In addition to the revenue impact, it is unclear what the state's fiscal liability would be if the contract with the private vendor for the photo enforcement system was terminated.

Analysis

As indicated above, HB 2106 would repeal A.R.S. § 41-1722 which: 1) required DPS to enter into a contract with a private vendor to establish a state photo enforcement system to enforce state vehicle traffic and speed laws; 2) established a \$165 (plus 10% clean elections surcharge) fine for a citation or a notice of violation; and 3) created the Photo Enforcement Fund to receive the fines associated with the citation or notice of violation. Any monies in the Photo Enforcement Fund in excess of \$250,000 at the end of each quarter would be deposited into the General Fund.

Laws 2008, Chapter 286 (the Criminal Justice Budget Reconciliation Bill) appropriates a total of \$22,534,300 to DPS from the Photo Enforcement Fund in FY 2009 for the statewide photo enforcement system. Of this amount, \$2,173,000 is appropriated for DPS staff expenses related to overseeing and administering the photo enforcement system and \$20,361,300 is appropriated to DPS for payment of private vendor contracts related to operation of the photo cameras and processing citations. The remaining \$4,056,600 is appropriated to the Administrative Office of the Courts for processing photo enforcement citations. Payment to the private vendor is based on the number of citations and/or Notices of Violation (NOVs) paid each month, at each photo enforcement system, rather than the number of citations or NOVs issued. Specifically, the vendor receives \$28.75 for 1 to 1,200 paid citations/NOVs, \$22.95 for 1,201 to 1,500 paid citations/NOVs, and \$16.95 for 1,501 or more citations/NOVs.

While the fiscal impact of HB 2106 cannot be determined at this time as the program recently began and continues to be phased-in, DPS provided preliminary statistics on the program through January 31, 2009. According to DPS, a total of 76 mobile (42) and stationary (34) units were deployed and these 76 units were activated 570,258 times and resulted in 164,778 NOV's, 3,664 civil citations, and 1,443 criminal citations.

Of the 164,778 NOVs issued, 34,028, or 20.7%, were paid. This rate of payment is anticipated to be artificially low, however, as the number of paid NOVs is applied against the total number of NOVs issued -- some of which were issued within the last 40 days and payment is not yet due. Based on this data, the JLBC Staff estimates revenues to the Photo Enforcement Fund should total approximately \$6,176,100, including the 10% Clean Elections Surcharge. Based on discussions with DPS, the JLBC Staff's estimated revenue and allocation of the fine and surcharge are reflected in *Table 1*.

(Continued)

Table 1
Estimated Photo Enforcement Program Revenues and Allocations
Through January 31, 2009

<u>Revenues:</u>	<u>Per Paid Citation</u>	<u>YTD Transactions</u> ^{1/2/}
Base Fine	\$165.00	\$5,614,600
Surcharge (10%)	<u>16.50</u>	<u>561,500</u>
Total Revenues	\$181.50	\$6,176,100
<u>Allocation:</u>		
Clean Elections Fund	\$16.50	\$561,500
DPS	13.48	458,800
AOC	25.17	856,500
Vendor	29.70	1,010,600
Photo Enforcement Fund (Balance)	-	250,000
General Fund	<u>96.65</u>	<u>3,038,700</u>
Total Allocation:	\$181.50	\$6,176,100

1/ Based on DPS' preliminary report that indicates a total of 34,028 NOVs have been paid through January 31, 2009.

2/ Because of the lag in allocating monies amongst the various recipients, data reflected here is only an estimate of the activity and not intended to match actual transactions occurring through January 31, 2009.

In addition to forgone revenue to the funds reflected in *Table 1*, HB 2106 is anticipated to reduce revenues to various other funds as a result of criminal speed violations detected by the system. For example, if the photo enforcement system identifies an individual violating criminal traffic laws, such as exceeding 85 miles per hour (mph) in a 65 mph zone, a criminal traffic citation is issued. In this circumstance, the criminal citation would be referred directly to the court and any fines would be subject to surcharges totaling 84% as well as a probation surcharge fee. As a result, the bill would reduce revenues to the recipients of the fine, local jurisdictions, and surcharges, the Criminal Justice Enhancement Fund (47%), Medical Services Enhancement Fund (13%), Clean Elections Fund (10%), Deoxyribonucleic Acid Identification Fund (7%), Fill the Gap monies (7%), and probation surcharge (\$20.00 in Maricopa County and \$10.00 in all other counties). Through January 31, 2009, DPS reports a total of 1,443 criminal citations had been issued.

At this time, any liability or cost to the state due to HB 2106 prohibiting photo enforcement systems on state highways, and the cancellation of the contract, is unknown. While DPS' contract with the vendor includes several provisions addressing termination, Legislative Council believes the following 3 provisions may be applicable under HB 2106. These provisions and a brief explanation are as follows:

- “Termination for Convenience” – Would allow the state to cancel the contract if it is not in the best interest of the state. Under this provision, however, the state is liable for “just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.” At this time, the state’s liability is unknown as the contract specifies the vendor “...shall provide all equipment, hardware, software, personnel and services (inclusive of any installation)...” Further, the vendor, not the state, owns all equipment, hardware, and software.
- “Availability of Funds for the Next Fiscal Year” – Acknowledges that funds may not presently be available for next fiscal year (FY 2010) for this contract and specifies “no legal liability on the part of the state for any payment may arise under this contract beyond the current fiscal year (FY 2009) until funds are made available for performance of this contract.”
- “Availability of Funds for the Current Fiscal Year” – Specifies that “should the Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the state may do 1 of 3 things”, including accepting a decrease in price offered by the vendor, canceling the contract, or canceling the contract and re-bid the solicitation.

Based on the terms of the contract, all contract claims or controversies under the contract shall be resolved according to Arizona Procurement Code relating to legal and contractual remedies. Further, the contract requires all disputes arising out of or relating to the contract to be resolved via arbitration.

Local Government Impact

The bill may result in decreased revenue to local governments that receive monies resulting from any criminal citations issued by the photo enforcement system, as the fines from these citations as well as all or a portion of the various surcharges may benefit local governments.

2/5/09